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Cr1.A.No. 579 OF 2003

ITEM No.105

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL Nos.579 OF 2003

SUKHVINDER SINGH @ BINDA Appellant (s)

VERSUS

STATE OF HARYANA Respondent (s)  
(with appln. for bail )

Date : 17/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU  
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. KB Sinha, Sr. Adv.  
Ms. Kanwaljit Kochhar, Adv.  
Mr. Amitesh Poddar, Adv. for Ms. Kusum Chaudhary, Adv.

For Respondent (s)Mr. DP Singh Adv.  
Ms. Avneet Toor, Adv. for  
Mr. VK Garg, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the parties.

The appeal is allowed in terms of the signed order and the appellant is directed to be released forthwith if not required in connection with any other case.

(D.L.Chugh) (Kanwal Singh)  
Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.579 OF 2003

SUKHVINDER SINGH @ BINDA Appellant(s)

versus

STATE OF HARYANA Respondent(s)

O R D E R

Heard the learned counsel for the parties.

The appellant who stood charged and convicted by the learned Additional Sessions Judge II, Kurukshetra for an offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "the IPC") has challenged the judgment of the Division Bench of the High Court of Punjab and Haryana dated 3.10.2002 in Criminal Appeal No.369-DB of 1998 whereunder the conviction and sentence of life imprisonment, in addition to the levy of fine of Rs.1,000/- with a default clause therefor imposed by the learned trial judge came to be affirmed. The occurrence related to the alleged commission of the murder by the appellant of his real brother by name Darshan Lal and his wife Kamlesh Rani on the early hours of 5.5.1997. The deceased and his wife were said to have been occupying the upper story of the house in which the appellant and his father was said to be residing in the ground floor. In the upper story of the house besides the victims a tenant was also said to have been residing. The informant, who has been examined as PW 1 is said to be the nephew of Ajmer Singh the father of the deceased and the appellant. According to him, on 5.5.1997 he had gone to the house of his uncle in the village and when his uncle was woken up and asked about Darshan Lal whom he wanted to meet he was informed that Darshan Lal was sleeping on the upper story of the house. He went up via stairs case and found the deceased Kamlesh Rani lying dead in the kitchen with multiple injuries and her husband lying dead in the bed room with multiple injuries and face turned up. On his lodging the complaint, the police registered a case and undertook investigation. Even the police dogs were summoned and after having the post mortem conducted and completing the investigation a charge sheet came to be filed against the appellant for the charge noticed above. The accused-appellant denied the charges and in the course of trial PWs 1 to 15 were examined, in addition to the marking of documents and exhibits in support of the case of the prosecution. The appellant was also examined under Section 313 of the Code of Criminal Procedure to enable him to explain the circumstances appearing against him and they were all denied by the accused-appellant either for want of knowledge or otherwise. On consideration of the materials on record the learned Sessions Judge found that all materials links completing the chain of circumstances pointed to the guilt of the appellant, though motive part of the crime could not be substantiated and though strong reliance was placed by the prosecution on the extra judicial confession said to have been made by the appellant before PW 2, the same did not appeal to the learned trial judge for acceptance. The learned trial judge felt convinced of the guilt of the appellant on certain vital circumstances such as unexplained injury on the person of the appellant coupled with the recovery of the weapons of offence and blood stained clothes and the fact that the manner in which the murder appears to have been committed could not have been committed by anyone else except a person who was familiar with the victims and who could have had easy access to the upper story where the victims lived without catching the attention of any other in the house.

Aggrieved, the appellant pursued the matter on appeal before the High Court as indicated (supra) unsuccessfully. The learned Judges of the Division Bench also agreed with the findings of the learned trial judge on a consideration of the materials on record. Hence this appeal. Mr. K.B. Sinha, learned senior counsel appearing for the appellant strenuously contended that the courts below overlooked that none of the links considered to be vital circumstance either by themselves individually or taken together were sufficient to form the necessary links to complete chain of circumstances to lead inevitably only to the guilt of the appellant and that the so called circumstances themselves lacked any concrete basis or credibility to constitute as real adverse circumstances to involve the appellant in the occurrence and consequently the judgments of the courts below, though concurrent, suffered serious infirmities resulting in grave miscarriage of justice and are liable to be set aside. Our attention has been drawn to relevant portions of the judgments of the courts below as also the evidence on record to justify the stand taken for the appellant. Per contra, Mr. D.P. Singh, learned counsel appearing for the respondent-State while adopting the reasoning of the courts below with equal force and vehemence contended that the adverse circumstances have been properly substantiated and they lent sufficient support to prove the guilt of the appellant. It was also urged for the respondent that the best of evidence that would be available and could be collected having regard to the nature of the crime, the person involved, the manner and the place of occurrence and the extent of co-operation forthcoming from the interested nature of the possible witnesses available have been meticulously gathered and presented before court and, therefore, the concurrent findings recorded by the courts below on a proper consideration of the materials on record do not suffer any patent infirmity or illegality to call for interference in this appeal.

We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the circumstance sought to be relied upon as adverse circumstances against the appellant to prove the guilt of the appellant cannot be called really vital or relevant circum

stances adverse to the appellant or providing necessary and continuous links to constitute a complete chain necessarily leading only to the guilt of the accused. At best, in our view, they are merely certain inferences based on assumptions lending credence at the most to some strong suspicion of possible involvement of the appellant and not enough by themselves to prove any real or actual involvement of the appellant or to substantiate the culpability of the appellant for the murder of the deceased, his real brother and his wife. It is under such peculiar circumstances of this case, the absence of any motive or even some semblance of motive for the appellant to commit the murders in question, assumes real significance though normally mere absence of motive cannot invariably and as a matter of general rule be taken to be an exculpating factor to exonerate the accused when there is otherwise ample material to sufficiently prove the role and participation of the accused in the commission of the crime. That apart the much made about recovery of the alleged weapons used in the commission of the offence does not also inspire that much or any confidence, both from the manner in which it was said to have been recovered and the place of its recovery- an open place accessible to any and everyone.

In our view, both the courts below seems to have been carried away by the gruesome nature of the murders completely missing the target in fixing on firm basis the actual culprit who could be held responsible for the crime. The three circumstances noticed, rather in our view assumed erroneously to provide links are more in the nature of weak and too slender facts without any special significance to effectively establish the involvement of the appellant in the occurrence. Certain other lapses apparent on the facts in omitting to take effective steps to trace for real and vital clues which could have possibly led to the fixation of the actual culprit also, considerably undermine the truth and credibility of the case of the prosecution. The courts below have proceeded more in a superficial and cursory manner without proper or due application of mind objectively as was expected of them. Consequently, we are unable to persuade ourselves to affix our seal of approval to such perfunctory and nebulous findings of the courts below.

In the result, the appeal is allowed and the conviction of the appellant is set aside. The appellant, who is in jail, shall be released forthwith, if not required in connection with any other case.

.....J.  
(DORAISWAMY RAJU)

.....J.  
(ARIJIT PASAYAT)  
New Delhi,  
December 17, 2003